

### REMARKS

Presently, claims 1-21 and 85-113 are pending in the application. Claim 114 has been cancelled. Claim 10 has been amended to correct an antecedent basis error noted by Applicants. No new matter has been added by the foregoing amendments.

#### *Entry of Rule 116 Response*

Entry of the Amendment herein is respectfully requested because such Amendment, is formal in nature and does not raise any new issues that would require further consideration and/or search, since all of the limitations in the pending claims were previously presented, considered and presumably searched. No new matter is raised by this Amendment. **The Amendment could not have been presented earlier since it responds to a new ground of rejection made in the final rejection.** Lastly, it is requested that the Amendment be entered even if all of the rejections are not satisfied because the proposed Amendment will place the application in better form for appeal by materially simplifying the issues.

#### *Claim Objection*

The Examiner has objected to claim 114, as failing to further limit claim 1. Claim 114 has been canceled. Accordingly, the Examiner's rejection is overcome. Applicants respectfully request that the Examiner withdraw the objection to claim 114.

***Claim Rejection – § 102(e)***

The Examiner has rejected claims 1-4, 6-13, 16-21, 27 and 85-112 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,463,585 to Hendricks *et al.* (“Hendricks”). Applicants respectfully traverse this rejection.

**The Teachings of Hendricks**

With respect to the Examiner’s on-going rejection of the claims over Hendricks, Applicants respectfully point out that it appears as though the Examiner has failed to address all aspects of certain claims in making the rejection. In addition to demonstrating why the independent claims are allowable over Hendricks, Applicants respectfully direct the Examiner’s attention to the dependent claims which offer even greater distinctions over the art of record. Applicants entreat the Examiner to at least consider each pending claim and in particular to those claims that the Applicants point to in this response.

Much of the disagreement over the patentability of the present claims is based on the Examiner’s interpretation of Hendricks. The Examiner relies on a portion of the text of Hendricks (column 4, line 54 to column 5, line 51) to support the contention that Hendricks teaches “correlating available addressable units of a communication network with avails (advertising opportunities or slots)” (Final Rejection page 3). However, no such teaching exists in this or any other portion of Hendricks.

Perhaps most importantly, the Examiner continues to mistakenly equate the “avails” recited in Applicant’s claims with the “advertisement spots,” or an actual advertisement itself, described in Hendricks. The Examiner’s rejection rests on the premise, in the words of the Examiner, that Hendricks teaches “correlating the received segment with the stored addressable unit data and automatically identifying the available addressable units to be correlated with the avail (advertisement spots).” (Final Office Action, Page 8). This is incorrect since the Examiner juxtaposes avails and

advertisement spots. Applicants believe that this is the origin of the Examiner's primary misunderstanding of the claimed invention.

The Examiner's language, "the avail (advertisement spots)", suggests that avails are advertisement spots. Based on the meaning of "advertisement spots" in Hendricks, however, a "spot" is not an avail and cannot be equated with an avail.

It is clear that avails are not "advertisements spots" from the plain language of Hendricks. For instance, Hendricks explains that, "Once specific spots are selected for each program break...", (column 6, line 1), and that, "each program break may contain one or more "Pods" during which a "commercial spot" or targeted advertisement may be aired," (column 5, lines 33-35). Thus, it is clear that Hendricks selects specific "spots" (or advertisements) to place in "program breaks" or "Pods." Note that "program breaks" and "Pods" are distinct from "spots" and "advertisements". In Hendricks, a program break is where advertisements are placed. A spot or advertisement is placed into a program break or avail.

Furthermore, the meaning of an advertisement "spot" as used in Hendricks is consistent with its usage in advertising generally. That is, a "spot" would be understood by those skilled in the art to be an advertisement and not a program break or avail. Similarly, an "avail" as described in the present application and recited in the present claims is also consistent with terminology used in the art, and would be readily understood to be a program break or a space into which advertisements or spots are placed.

Accordingly, Applicants respectfully submit that one skilled in the art would realize that an avail cannot be equated with a "spot" or an advertisement, since a "spot" or advertisement is not a time slot in a channel. "Spots" in Hendricks are actual advertisements and "breaks" are places to insert the "spot." As such, Applicants believe that the Examiner's reading of Hendricks is simply incorrect.

Applicants also fail to understand from where the Examiner draws the conclusion that Hendricks teaches "correlating the received segment with the stored addressable unit

data and automatically identifying the available addressable units to be correlated with the avail (advertisement spots).” Although, Hendricks does teach selecting advertisement for display at television terminals, no connection is made between television terminals and avails. According to the Examiner’s notation, this conclusion is based on (col. 21, lines 19-44, col. 68, lines 48-60, col. 70, line 40 to col. 71, line 45).

The first portion cited-to portion of Hendricks describes EIS (Executive Information System). EIS allows for “real-time evaluation of current product positioning.” According to Hendricks, “product refers to programs, events or services” (column 21, lines 17-18). There is no disclosure in this section of “correlating available addressable units of the communications network with an avail inventory.”

The second portion cited to by the Examiner refers to the “Alternative Advertisement Targeting Routine.” According to Hendricks, this routine packages commercials geared towards particular viewers. Note that it is advertisements - not avails that are geared to viewers. This section also contains reference to an “Account/Billing Routine.” Clearly this routine is for billing viewers, not those who might purchase avails.

The final section cited by the Examiner describes using correlation algorithms to select a set of the most heavily weighted advertisements for transmission to subscribers or sets of subscribers. The Examiner may contend that this translates to correlating advertisements with television terminals; however, it does not equate to correlating addressable units with avails, since avails and advertisements are different (as discussed above). As advertisements are delivered to the subscribers, the “account and billing database” is updated based on the ads that are sent. The update of the “account and billing database” has no relation to a correlation of avails and addressable units.

Although Hendricks may charge different rates to different advertisers, such rates, even if determined before the scheduling occurs, are not for specific avails corresponding to particular addressable units – they are for displaying advertisements in general. Thus, Hendricks does not teach a system that “generates a price before selecting advertisement,” for at least one avail as the Examiner argues (on page 4 of the Office

Action). This is because the price in Hendricks is not associated with any avail, but is instead associated, as the Examiner correctly points out with different advertisers (“rate charged to different advertisers” (Office Action, page 9)). Thus, Hendricks simply does not identify and price particular avails corresponding to addressable units that may be purchased by a user.

Hendricks teaches the determining of “spots” to be transmitted to television terminals, primarily based on demographics (column 6, lines 51-67). Hendricks describes an embodiment of this system as a “spot placement engine.” If the “spot placement engine” was concerned with correlating “breaks” with television terminals, then Hendricks likely would not have named it a “spot placement engine.” In fact it is clear from Hendricks’ description that the “spot placement engine” is concerned with placing ads or “spots”, and does not correlate programming breaks with television terminals. Ultimately, if anything, Hendricks coordinates “spots” or ads with television terminals and not programming breaks or avails with television terminals.

### **Patentability over Hendricks**

For a rejection under § 102(e) to be proper, a reference must disclose, either explicitly or inherently, each and every element of the claimed invention. Applicants respectfully submits that Hendricks does not disclose each and every element recited in independent claim 1.

Independent claim 1 recites:

A computer-implemented method for managing avail inventory data of media programming streams for a communications network, the method comprising the steps of:

correlating available addressable units of the communications network with an avail inventory; and

generating a proposed price for purchase of at least one avail based on results of the correlating step.

Hendricks does not disclose “correlating available addressable units of the communications network with an avail inventory.” Hendricks does not teach comparing an inventory of avails to the available addressable units. At best, Hendricks teaches matching advertisements with television terminals. This is not the same as correlating an available ad slot (avail) with an addressable unit.

Furthermore, Hendricks does not disclose the generation of a proposed price for purchase of at least one avail based on correlation of an avail inventory and available addressable units. As recited in claim 1, the proposed price is based on the correlating of avails and addressable units. For at least these reasons, and in view of the foregoing discussion with respect to the difference between an avail and a spot, independent claim 1 is believed to be patentable over Hendricks.

Additionally, Applicants also direct the Examiner to dependent claims 10, 85, and 86. Dependent claim 10 recites “wherein a subset of the available addressable units are selected by the user and a subset of the available avails are selected by the user, whereby the price-setting parameters are selected.” Nowhere in Hendricks is a user enabled to select a subset of the avails. Stated differently, the act of an advertiser providing an indication of the target group of an advertisement as taught in Hendricks is not the same as allowing a user to affirmatively select subsets of avails and subsets of addressable units.

With that in mind, Applicants direct the Examiner’s attention to claims 85 and 86, which recite “wherein a user selects” and “receiving a purchase request from a user,” respectively. Hendricks simply does not allow a user to make affirmative selections of avails. Hendricks only selects advertisements in an automated fashion to fill breaks based on a matching scheme. Note that Hendricks teaches neither the selecting of avails nor the ability of a user to do so.

As noted in Applicants’ last response, page 19, filed February 5, 2007:

Further, dependent claim 85 recites that “a user selects at least one avail for purchase.” Hendricks clearly does not teach this aspect of claim 85. The Examiner argues that because Hendricks teaches “that the frequency of display may be based on various factors, including the number of requests and cost paid by respective advertisers to have the commercial displayed,” this is somehow equivalent to allowing a user to select at least one avail for purchase. Making requests for the display of advertisements is simply not the same as a user selecting an avail for purchase. Hendricks simply allows advertisers to request that advertisements be displayed and does not allow them to select a particular avail for the display of advertisements. Applicants note that the Examiner has seemingly failed to address a user selecting an avail for purchase as recited in dependent claim 85.

Applicants reiterate their request for the Examiner to specifically address dependent claim 85. The Examiner writes that “Examiner would like to point out that the claim does not recite that the advertiser is given the option to select particular avails (advertising opportunities or slots).” Applicants stipulate that claim 1 does not affirmatively recite this aspect. However, claim 85 recites “[t]he method of claim 1, wherein a user selects at least one avail for purchase.” Applicants also direct the Examiner’s attention to dependent claim 113, which recites “allowing a user to select for purchase a subset of the avails...” Claim 113 again recites that the user may select avails for purchase and therefore is believed to be clearly patentable over Hendricks.

Independent claim 88 recites:

A computer-implemented method for managing avail inventory data of media programming streams for a communications network, the method comprising:

- (a) receiving a market segment selection from a user;
- (b) obtaining a record of segment specific addressable units available to said user, wherein said segment specific addressable units are characterized as belonging to said selected market segment;

(c) obtaining an inventory of avails corresponding to said segment specific addressable units; and

(d) generating a proposed price for avails in said inventory of avails.

In rejecting independent claim 88, the Examiner again refuses to acknowledge that Hendricks is concerned with matching ads to television terminals in order to target ads, whereas claim 88 recites obtaining avails corresponding to addressable units. The Examiner cites column 31, lines 1-6 of Hendricks as teaching “receiving a market segment selection from a user.” However, this section of Hendricks does not indicate “receiving a market segment selection from a user” as recited in claim 88. Instead this section describes how advertisers indicate to whom their advertisements are targeted. The advertisers cannot affirmatively indicate a market segment. The advertisers in Hendricks can only indicate the market segment to which their ad is oriented. Then the system of Hendricks performs matching of ads with television terminals in an automated fashion, without user input. Ultimately, the user is not allowed to enter a market segment selection as recited in claim 88. Therefore, Hendricks does not teach this aspect of claim 88.

Furthermore, Hendricks does not obtain an inventory of avails corresponding to segment specific addressable units. Hendricks never produces, obtains, or retrieves an inventory of avails. It is unclear what portion of Hendricks the Examiner is pointing to in order to teach this aspect of claim 88. It is equally unclear how any of the cited portions can teach this aspect of claim 88. Applicants assume the Examiner is referring to the functions of the “break management engine” and the “spot placement engine” in Hendricks. However, neither of these engines obtains an inventory of avails corresponding to segment specific addressable units. The break management engine in Hendricks assigns feeder channels to program breaks and/or individual advertisements to pods (column 31, lines 6-16). The related “switching plan” can require the switching of individual set top terminals (column 31, lines 22-25). “The spot placement engine 307 determines which specific advertisements are to be placed in each available open pod of the program break.” (column 31, lines 27-30). None of these systems obtain an



inventory of avails corresponding to segment specific addressable units. Instead, they determine what ads to put in breaks or pods. Therefore, Hendricks does not teach this aspect of claim 88.

Similarly, as discussed above in respect to claim 1, Hendricks does not address aspect (d) of claim 88, “generating a proposed price...” Accordingly, independent claim 88 is believed to be allowable over Hendricks.

Furthermore, when many of the dependent claims of claim 88 are analyzed, it is even clearer that the claims are distinct from Hendricks. For instance, dependent claim 95 recites that, “a user selects at least one avail for purchase in said inventory of avails.” No such selection process is described in Hendricks and it seems that the Examiner does not even address this dependent claim with clarity that would allow Applicants to understand the rejection. In Hendricks, the advertiser simply submits ads to be scheduled by the above identified “break management engine” and the “spot placement engine”. The advertiser is not allowed to select “at least one avail for purchased in said inventory of avails,” since selecting requires making a choice or an act of picking out. This deficiency is especially noticeable since Hendricks has not even created an inventory of avails from which to select avails.

With respect to dependent claim 99, Hendricks’ disclosure of different rates to different advertisers or staying within an advertiser’s budget, surely cannot be inferred to teach basing the price of avails on the market segment selection (“said proposed price is dependent on said market segment selection” as recited in claim 99). Applicants note that the market segment selection causes the selecting of specific addressable units and the avails associated with those units.

With respect to independent claim 101, Applicants note that the Examiner fails to address aspect (a), which recites, “receiving a programming selection from a user.” Hendricks does not receive a programming selection from a user and then obtain a listing of addressable units available to the user for the avails corresponding to the programming

selection. For this reason and the reasons discussed above regarding the patentability of independent claim 1, independent claim 101 is believed to be patentable.

With respect to claim 104, Applicants note that Hendricks does not disclose that the “price for said avails is dependent on whether the addressable unit corresponding to an avail is within said market segment.” Similar to dependent claim 99, Hendricks’ disclosure of different rates to different advertisers or staying within an advertiser’s budget, surely cannot be inferred to teach basing the price of avails on whether an addressable unit is in a market segment. Therefore, Applicants believe that claim 104 offers additional patentable distinctions over Hendricks.

With respect to independent claim 105, the Examiner seemingly ignores that the claim recites, “receiving a correlation selection from a user, wherein said correlation selection indicates the preference of said user to be presented with avails that correspond to said correlation selection.” Nowhere in Hendricks can the user enter a correlation selection representative of the desire of the user to be presented with corresponding avails and have a proposed price generated for those avails. Hendricks allows an advertiser to indicate targeting criteria for his advertisement, but not to indicate a correlation selection and be presented with corresponding avails (yet again noting that avails and advertisements are distinct). For this and the reasons discussed above, independent claim 105 is believed to be patentable over Hendricks.

Dependent claim 106 recites that the user may actuate the purchase of an avail. In Hendricks, the user may only submit his advertisement for targeting and display, but there is no mechanism for affirmatively purchasing an avail. Therefore, dependent claim 106 is believed to be patentable.

Dependent claims 2-21, 85-87, 89-100, 102-104, and 106-113 are believed to be allowable at least by their dependency on independent claims 1, 88, 101, and 105, respectively. Reconsideration and withdrawal of the Examiner’s rejection of claims 1-4, 6-13, 16-21, and 85-113 are respectfully requested.

***Prior Art Rejection – 35 U.S.C. 103(a)***

The Examiner has rejected claims 5, 14, and 15 under 35 U.S.C. 103(a) as being unpatentable over Hendricks in view of U.S. Patent No. 6,424,998 to Hunter (“Hunter”). Applicants respectfully traverse this rejection.

As discussed above with respect to independent claims 1, 88, 101, and 105, Hendricks does not disclose all of the features of the independent claims. Hunter does not teach or suggest the element(s) missing from Hendricks. Therefore, even if the combination of Hendricks and Hunter is proper, such combination does not teach or suggest all of the features of independent claims 1, 88, 101, or 105. Accordingly, Applicants respectfully submit that independent claims 1, 88, 101, and 105 are allowable over the combination of Hendricks and Hunter.

Dependent claims 5, 14, 15, 89-100, 102-104, and 106-113 are allowable at least by their dependency on independent claims 1, 88, 101, and 105, respectively. Reconsideration and withdrawal of the Examiner’s rejection of claims 5, 14, and 15 are respectfully requested.

***Conclusion***

In view of the foregoing amendments and remarks, Applicants respectfully submit that the Examiner's rejections have been overcome, and that the application, including claims 1-21 and 85-113, is in condition for allowance. Reconsideration and withdrawal of the Examiner's rejections and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

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